

**Chapter 52. Voluntary Registration of Environmental Assessors.****§ 69200. Definitions.**

For purposes of this Chapter, definitions in Health and Safety Code section 25570.2 shall apply unless further specified in this section:

(a) "Corrective Action Plan" means a workplan that details the actions to be taken to achieve the required corrective action.

(b) "Department" means the Department of Toxic Substances Control.

(c) "Director" means the Director of the Department of Toxic Substances Control or designee.

(d) "Environmental quality assessment" or "assessment" means a systematic, documented, periodic, and objective review of the operations and practices, used by any commercial or industrial business or individual whose activities are regulated or conducted under Chapter 6.5 (commencing with section 25100), Chapter 6.8 (commencing with section 25300), or Chapter 6.95 (commencing with section 25500) of the Health and Safety Code, to achieve, monitor, maintain, and where feasible exceed, compliance with state environmental, worker health and safety, and public health requirements for the manufacture and use of hazardous substances and the generation and disposal of hazardous wastes. A complete environmental assessment includes a number of different components related to hazardous substance and hazardous waste management and requires the expertise of a variety of assessors. An environmental assessment includes technical or managerial recommendations or actions, of a general or specific nature, in one or more of the following areas:

(1) Recommendations or specific actions for complying with, and where feasible, exceeding legal requirements in areas related to hazardous substance and hazardous waste management, including, but not limited to, air quality, water quality, emergency preparedness and response, hazard communications, and occupational safety and health.

(2) A qualitative review, or where feasible, a quantitative review, of the risks resulting from occupational, public or environmental exposure to hazardous substances.

(3) Recommendations or actions for anticipating and minimizing the risks specified in paragraph (2), including any potential liability, associated with regulated and unregulated hazardous substances, and any suggested management procedures or practices.

(e) "Feasibility Study" means the identification and evaluation of technically feasible and effective remedial action alternatives to protect public health and the environment at a hazardous waste or hazardous substance release site, or other activities deemed necessary by the lead agency for the development of a remedial action plan, corrective action plan, removal action workplan or equivalent. A feasibility study shall include treatability studies as necessary to evaluate potential performance and the cost of treatment and/or remedial work.

(f) "Hazardous Substance or Hazardous Waste Site Cleanup Opinion" means the opinion of a Registered Environmental Assessor (REA) II of the need for further investigation or remedial work at a site.

(g) "Lead Agency" means the Department of Toxic Substances Control, the State Water Quality Control Board, Regional Water Quality Control Boards, Certified Unified Program Agency, as defined in Health and Safety Code section 25281(c)(1), Participating Agency, as defined in Health and Safety Code section 25281(c)(2), Unified Program Agency, as defined in Health and Safety Code section 25281(c)(3), or the local, authorized administering agency, overseeing the assessment or mitigation activities at a site, and pursuant to these regulations.

(h) "Multi-media investigations" means hazardous waste or hazardous substance site assessment and characterization work requiring serious evaluation of pathways of exposure in two or more of the environmental media consisting of air, water and soil.

(i) "Operation and Maintenance" means those activities initiated or continued following completion of a remedial or removal action that are deemed necessary by the lead agency to protect the public health and the environment and achieve or maintain the abatement goals established by the final remedial action plan, corrective action plan, removal action workplan, or equivalent.

(j) "Phase I Environmental Assessment" or "Phase I" means a preliminary site assessment based on reasonably available knowledge of a site, including, but not limited to, historical use of the property, prior releases, visual and other surveys, records, consultant reports, and regulatory agency correspondence. Sampling or testing is not required as part of the Phase I survey. The Phase I survey shall be certified by an REA and shall indicate whether the REA believes that further investigation, including sampling and analysis is necessary to determine whether a release has occurred, or to determine the extent of a release.

(k) "Physical Sciences" means any of the sciences, such as physics and chemistry, that analyze the nature and properties of energy and non-living matter.

(l) "Preliminary Endangerment Assessment" means an activity which is performed to determine whether current or past waste management practices have resulted in the release or threatened release of hazardous substances which pose a threat to human health or the environment. A Preliminary Endangerment Assessment shall include a review of the Phase I Environmental Assessment, sampling, data evaluation, public participation (as required by section 69211(a)(2), human health screening, ecological screening and a report of the findings of the assessment.

(m) "Professional-level environmental experience" means all of an REA II's professional experience that is determined by the Department to be experience applying scientific or engineering principles in a physical or biological science, engineering or related field. This experience includes instances where the REA II's conclusions formed the basis for reports, studies and other similar documents. Professional-level environmental experience shall be in positions in which scientifically supportable technical decision-making, as well as professional responsibility and

integrity are demonstrated with minimal supervision.

(n) "Professional-level site mitigation experience" means supervisory or project management related experience obtained through managing or supervising scientific or engineering staff who are conducting multimedia investigations, assessments, and cleanup work at hazardous substance and hazardous waste sites. Such experience shall be of a professional-level and indicative of an REA II's competence to conduct investigations, assessments, and remedial work and/or to render opinions regarding investigations, assessments, and remedial work at response action sites. Professional-level site mitigation experience shall be in positions in which the applicant evaluated and selected scientific or technical methodologies for conducting assessments, containments, or removals at sites; supervised or coordinated other professionals in the conduct of scientific and technical tasks necessary to complete assessments, containments, or removals; and drew scientifically supportable technical conclusions, made recommendations, and issued opinions based on the results of assessments, containments, or removals.

(o) "REA I Applicant" means any person applying for registration or renewal of registration as a California Registered Environmental Assessor -- Class I (REA I).

(p) "REA II Applicant" means any person applying for registration or renewal of registration as a California Registered Environmental Assessor -- Class II (REA II).

(q) "Registered Environmental Assessor -- Class I (REA I)" means an individual registered by the State of California pursuant to California Code of Regulations, title 22, sections 69200 through 69202, who, through academic training, occupational experience, and reputation, is qualified to objectively conduct one or more aspects of an environmental assessment. REA Is may include, but shall not be limited to, specialists trained as analytical chemists, professional engineers, epidemiologists, geologists, hydrologists, attorneys with expertise in hazardous substance law, physicians, industrial hygienists, toxicologists, and environmental program managers. The work of an REA I includes, but is not limited to, Phase I assessments and waste reduction plans and reports prepared pursuant to the Hazardous Waste Source Reduction and Management Review Act of 1989, commencing with section 25244.12 of the Health and Safety Code.

(r) "Registered Environmental Assessor -- Class II (REA II)" means an individual registered by the State of California pursuant to California Code of Regulations, title 22, sections 69203 through 69214. An REA II issues hazardous substance and hazardous waste site cleanup opinions which describe whether contamination is present at a site, the work needed to reduce the risk from that contamination and whether that work has been completed. These opinions are based upon careful study of a site, including, but not limited to, preliminary endangerment assessments, remedial investigations, feasibility studies, remedial design, remedial actions, corrective action plans, remedial action plans and other work associated with the investigation, assessment and remediation of hazardous waste and hazardous substance release sites.

(s) "Registrant" means any person registered as an REA I or REA II.

(t) "Remedial Action" means those actions which are:

(1) consistent with a permanent remedy, that are taken instead of, or in addition to, removal actions in the event of a release or threatened release of a hazardous waste or hazardous substance into the environment;

(2) necessary to monitor, assess, and evaluate a release or a threatened release of a hazardous substance or hazardous waste; and

(3) Site operation and maintenance.

(u) "Remedial Action Plan" means a workplan which shall include the following:

(1) Health and safety risks posed by the conditions at the site. When considering these risks, the lead agency shall consider scientific data and reports which may have a relationship to the site,

(2) The effect of contamination or pollution levels upon the present, future, and probable beneficial uses of contaminated, polluted or threatened resources.

(3) The effect of alternative remedial action measures on the reasonable availability of groundwater resources for present, future, and probable beneficial uses.

(4) Site specific characteristics, including the potential for offsite migration of hazardous substances, the surface or subsurface soil, and the hydrogeologic conditions, as well as preexisting background contamination levels.

(5) Cost effectiveness of alternative remedial action measures.

(6) The potential environmental impacts of alternative remedial action measures including the reduction of toxicity, mobility and volume.

(7) A statement of reasons setting forth the basis for the removal or remedial actions selected, including an evaluation of each proposed alternative, and reasons for the rejection of alternative remedial or removal actions.

(v) "Remedial Design" means the detailed engineering plan to implement the remedial action alternative or initial remedial measure approved by the lead agency.

(w) "Remedial Investigation" means those actions deemed necessary by the lead agency to characterize the nature, full extent and risks posed by a hazardous substance and/or hazardous waste release at a site, identify the public health and environment threat posed by the release, collect data on possible remedies, and otherwise evaluate the site for purposes of developing a remedial action plan, corrective action plan, removal action workplan or equivalent. Characterization of the nature, full extent and risks shall include:

(1) Gathering information sufficient to support an informed risk management decision regarding which remedy appears to be most appropriate for a given site; and

(2) Data gathering shall be adequate to characterize site conditions, determine the nature and extent of wastes, determine whether there has been a groundwater discharge or a threat to surface or groundwater, assess exposure pathways and risks to public health and the environment.

(3) The risk characterization and assessment shall be performed in a manner consistent with scientifically

acceptable risk assessment practices and shall take into consideration guidance published by the Department.

(x) "Removal Action" means the cleanup or removal of released hazardous substances from the environment or the taking of other actions as may be necessary to prevent, minimize, or mitigate damage which may otherwise result from a release or threatened release of hazardous substances or hazardous wastes.

(y) "Removal Action Workplan" means a workplan which is developed to carry out a removal action, in an effective manner, which is protective of the public health and safety and the environment. The removal action workplan shall include a detailed engineering plan for conducting the removal action, a description of the onsite contamination, the goals to be achieved by the removal action, and any alternative removal options that were considered and rejected and the basis for that rejection.

(z) "Rescind" or "rescission" means to suspend or revoke an REA registration.

NOTE: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code. Reference: Sections 25570-25570.4, Health and Safety Code.

#### HISTORY

1. Change without regulatory effect adding new chapter 52 heading, renumbering title 14, division 8, chapter 3 (sections 19030-19044) to title 22, division 4.5, chapter 52 (sections 69200-69214) and renumbering and amending title 14, section 19030 to title 22, section 69200 filed 7-27-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 30).

#### **§ 69201. REA I Criteria for Registration.**

The applicant for registration as an REA I shall:

(a) Demonstrate a minimum of five (5) years full time experience in the REA I applicant's general field of expertise, acquired within the last eight (8) years.

(b) Demonstrate a minimum of two (2) years substantial experience in performing environmental assessments relating to hazardous substances and hazardous wastes acquired within the last four (4) years.

(c) Possess a bachelor's or higher degree from an accredited college or university in a physical or biological science, engineering or law. State certification, licensing or registration, or certification by a nationally recognized professional association in a physical or biological science, engineering or law shall be considered equivalent to such training. Five (5) years substantial experience performing environmental assessments relating to hazardous wastes or hazardous substances acquired within the last eight (8) years shall also be considered equivalent to such training.

(d) Provide the names, addresses, telephone numbers and professional affiliations of three or more references who as employers, supervisors, co-workers at equal or higher level or clients can attest to the accuracy of the evidence provided by the applicant, to the applicant's professional competence and character, or both.

(e) Apply using a form provided by the Director entitled "Registered Environmental Assessor (REA I) Application Form."

(f) An REA I applying for REA II registration shall also follow the application procedures in sections 69204 through 69205.

(g) Forward a \$50 (fifty dollar) non-refundable application fee by check, credit card, or money order made payable to the Department of Toxic Substances Control, Registered Environmental Assessor Program, or DTSC/REA I Program, along with the application.

NOTE: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code. Reference: Sections 25570-25570.4, Health and Safety Code.

#### HISTORY

1. Change without regulatory effect adding new chapter 52 heading, renumbering title 14, division 8, chapter 3 (sections 19030-19044) to title 22, division 4.5, chapter 52 (sections 69200-69214) and renumbering and amending title 14, section 19030 to title 22, section 69200 filed 7-27-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 30).

#### **§ 69202. REA I Application, Renewal, and Denial or Rescission of Registration.**

(a) The Director shall compile and update a directory of REA Is, based on the application information, and other relevant information brought to the Director's attention.

(b) Upon notice of acceptance, and annually thereafter, the REA I applicant shall forward the sum of \$100 (one hundred dollars) by check, credit card, or money order made payable to the DTSC/REA I Program. When submitting the annual renewal fee, REA Is may also update the application information they previously submitted.

(c) Each REA I shall apply for renewal of registration every five (5) years following the date of initial registration by completing a renewal application form provided by the Director and paying the application renewal fee of \$50.00 (fifty dollars).

(d) For cause, the Director may revoke or suspend the registration of any REA I and delete that assessor's name from the directory.

NOTE: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code. Reference: Sections 25570-25570.4, Health and Safety Code.

#### HISTORY

1. Change without regulatory effect adding new chapter 52 heading, renumbering title 14, division 8, chapter 3 (sections 19030-19044) to title 22, division 4.5, chapter 52 (sections 69200-69214) and renumbering and amending

title 14, section 19030 to title 22, section 69200 filed 7-27-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 30).

**§ 69203. REA II Criteria for Registration.**

(a) If an REA II applicant is not already registered as an REA I, then the REA II application will be considered an application for both an REA I and an REA II.

(b) Minimum Educational Requirements

(1) REA II applicants for registration shall have graduated from an accredited college or university and possess a bachelor of science degree, in a physical or biological science, engineering or a related field.

(2) The Department shall consider a United States (U.S.) college or university to be an accredited college or university when it is accredited by Middle States Association of Colleges and Schools, New England Association of Schools and Colleges, North Central Association of Colleges and Schools, Southern Association of Colleges and Schools, or Western Association of Schools and Colleges. A college or university which is located outside of the U.S. shall be considered an accredited college or university on the basis of its accreditation status in the education system which has jurisdiction. REA II applicants with a foreign degree may be required to submit a report by a member of the National Association of Credential Evaluation Services, Inc., or other qualified credential evaluation service.

(c) Minimum Experience Requirements.

(1) Each REA II applicant shall possess a minimum of eight (8) years of professional-level environmental experience, acquired within the last ten (10) years, of which four (4) years shall be professional-level site mitigation experience acquired in the last six (6) years. Professional-level environmental experience and professional-level site mitigation experience performed for less than an average minimum of thirty (30) hours per week will be applied toward the satisfaction of these requirements on a pro rata basis.

(d) Professional-Level Environmental Experience

(1) Professional-level environmental experience shall be determined by the REA II applicant's professional experience in positions in which the REA II applicant demonstrated scientifically supportable technical decision-making, as well as professional responsibility and integrity with minimal supervision.

(e) Professional-Level Site Mitigation Experience

(1) Professional-level site mitigation experience shall be determined by the REA II applicant's professional experience in positions in which:

(A) More than 50% of the REA II applicant's professional-level site mitigation position included assessment, containment, or removal action responsibilities;

(B) An REA II applicant evaluated and selected scientific or technical methodologies for conducting assessments, containments, or removals at sites;

(C) An REA II applicant supervised or coordinated other professionals in the conduct of scientific and technical tasks necessary to complete assessments, containments, removals; and,

(D) An REA II applicant drew scientifically supportable technical conclusions, made recommendations, and issued opinions based on the results of assessments, containments, or removals.

(2) Professional-level site mitigation experience shall be determined in part by at least four references, named by the REA II applicant, with professional-level site mitigation experience. At least one reference shall be from a qualified representative of a lead agency with regulatory authority over the cleanup work at a hazardous substance or hazardous waste release site at which the REA II applicant acted as project manager. None of the references shall be related to the REA II applicant by birth or marriage.

(3) Professional-level site mitigation experience shall be gained through exercising a broad range of responsibilities with assessments, containments, or removals, and may not be gained through exercising a narrow spectrum of responsibilities for parts and/or components of assessments, containments, or removals. Professional-level site mitigation experience may consist of work which includes the contributions of others in reaching decisions on waste site cleanup activities; however, REA II applicants must demonstrate to the Department that they have been an active participant and a principal decision maker, including but not limited to a team leader, project leader or principal scientist.

(f) All eligibility requirements contained herein shall be applied without regard to the race, creed, color, gender, religion, or national origin of the individual.

NOTE: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code. Reference: Sections 25570-25570.4, Health and Safety Code.

**HISTORY**

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**§ 69204. REA II Application for Registration.**

(a) An REA II applicant shall complete the Application Form titled "Application for Registration, Registered Environmental Assessor II, August 1998 (Form REA 3, revised 9/98 or electronic Form REA 4, revised 9/98), hereby incorporated by reference, and file the form, together with the REA II application fee, with the Department.

(b) Incomplete REA II applications, and applications that are not legible, not typed or printed, not completed according to the instructions, or not accompanied by the requisite fee and references, may be rejected by the

Department if the REA II applicant fails to correct identified deficiencies within 30 days of notification of the deficiency. The Department may require the REA II applicant, at any time during the review period, to submit references and information related to the REA II applicant's employment history, education, experience, and any other information necessary to clarify an REA II application.

(c) If requested, the REA II applicant shall submit copies of transcripts from the appropriate educational institution or other documentation issued by educational institutions from which the REA II applicant earned the degree to demonstrate the minimum education requirement for registration. If an REA II applicant is requested to provide official transcripts for a degree, the REA II application will not be considered complete and will not be reviewed until official transcripts of the degree have been received by the Department.

(d) The Department shall consider each REA II application and the REA II applicant's eligibility for registration. The Department shall review each REA II application and supporting evidence to determine the completeness of the REA II application. Within 30 days of receipt, the Department shall inform the REA II applicant, in writing, that the REA II application is complete and accepted for review, or that the REA II application is deficient and what additional information is necessary.

(e) All fees required by provisions of Health and Safety Code section 25570.3(e)(2) as implemented by the Department shall be transmitted by money order, bank draft, credit card, or check, payable to: "DTSC/REA II."

(1) The following are the fees:

\$125 nonrefundable application fee

\$275 annual fee

Total initial REA II application and annual fees are \$400.

NOTE: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code. Reference: Sections 25570-25570.4, Health and Safety Code.

#### HISTORY

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#### **§ 69205. DTSC's Review of Application.**

Within 60 days of the Department's determination that an REA II's application is complete under section 69204, the Department shall determine if the REA II applicant meets the minimum criteria in section 69203 and is eligible for registration.

(a) The Department shall review the application for registration of an REA II for current REA I registration. If the applicant for REA II is not registered as an REA I, he or she shall become registered as an REA I pursuant to section 69201.

(b) The Department shall review REA II applications meeting the requirements of section 69204, to determine if the applicant's experience and education qualify the applicant to perform the tasks required of an REA II. In order to make this determination, the Department shall consider all relevant information pertaining to the REA II applicant's education and experience as required by Health and Safety Code section 25570.3(c), including, but not limited to, information concerning:

(1) The knowledge, skill, and expertise of the REA II applicant;

(2) The duration of the REA II applicant's relevant employment;

(3) The previous performance of the REA II applicant with regard to various investigative methods used, including but not limited to, whether such experience includes work at sites where subsurface investigations have occurred;

(4) The previous performance of the REA II applicant with regard to the various types of remedial systems designed and monitored;

(5) The performance of the REA II applicant with regard to risk and exposure assessments;

(6) The number of individuals and disciplines of other professionals supervised or coordinated by the REA II applicant;

(7) The scientific defensibility of conclusions reached and recommendations and opinions presented by the REA II applicant; and

(8) The degree to which the REA II applicant relied upon other environmental consultants and the degree to which the REA II applicant's decision-making responsibilities were differentiated from others.

(c) Within 120 days of determining that an REA II application is complete under section 69204, the Department shall notify the REA II applicant, in writing, if registration is approved or denied.

(d) The determinations in sections 69203 and 69205 are made by reviewing evidence, including but not limited to references, reports prepared by the REA II applicant, time sheets, affidavits, comments, the REA II Application Form titled "Application for Registration, Registered Environmental Assessor II, August 1998 (Form REA 3, revised 9/98 or electronic Form REA 4, revised 9/98), hereby incorporated by reference, and other sources the Director deems appropriate.

NOTE: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code. Reference: Sections 25570-25570.4, Health and Safety Code.

#### HISTORY

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**§ 69206. REA II Denial of Registration.**

- (a) The Department may deny the registration of an REA II applicant for the following reasons:
  - (1) Failure to meet the minimum criteria in sections 69203 or 69204.
  - (2) Any of the grounds listed in Health and Safety Code section 25570.3(l)(1) through (8).
  - (3) Knowingly making any materially false or inaccurate statement in any application, record, or report.
- (b) Conviction of a felony or misdemeanor involving an act of moral turpitude, as used in Health and Safety Code section 25570.3(l)(7) includes, but is not limited to, fraud, bribery, the falsification of records, perjury, forgery, conspiracy, profiteering or money laundering.
- (c) Conviction of a felony or misdemeanor as used in Health and Safety Code sections 25570.3(l)(6) and (7) means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
- (d) An REA II applicant who is denied registration as an REA II may appeal to the Department for re-evaluation of their REA II application pursuant to section 69209. An appeal shall be filed within sixty (60) days after the date of the denial notice.
- (e) The Director has final authority with respect to the denial of the registration of an REA II applicant.

NOTE: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code. Reference: Sections 25570-25570.4, Health and Safety Code.

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**§ 69207. REA II Renewal of Registration.**

- (a) Registration shall be renewed within five (5) years of the anniversary date of the initial registration or renewed registration.
- (b) The Department may deny a renewal for any of the following:
  - (1) The Registrant fails to demonstrate that his or her experience during the prior five (5) years did not consist of more than 50% of professional-level site mitigation or professional-level environmental experience.
  - (2) The Director determines, pursuant to Health and Safety Code section 25570.3(i), that factual complaints regarding the work of the REA II warrant denying renewal; or
  - (3) Any of the grounds listed in section 69206.

NOTE: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code. Reference: Sections 25570-25570.4, Health and Safety Code.

**HISTORY**

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**§ 69208. REA II Rescission of Registration.**

- (a) The Director may rescind, temporarily or permanently, the registration of an REA II, or take other disciplinary action for any of the following reasons:
  - (1) The grounds specified in Health and Safety Code section 25570.3(l); or
  - (2) any of the grounds for denial of registration specified in sections 69206(a) or 69211.
  - (3) The REA II knowingly makes any materially false or inaccurate statement in any record, report, plan, file, log, or register that the REA II keeps, or is required to keep, pursuant to any law.
  - (4) The REA II knowingly and materially falsifies, tampers with, alters, destroys, or disturbs any mechanism, recovery, or control system, or any monitoring device or method that the REA II maintains, or that is required to be maintained pursuant to any law, regulation, or order for the protection of the public health and safety or the environment.
  - (5) The REA II knowingly makes any materially false or inaccurate statement in any application, record, report, certification, plan, design, or statement signed by the REA II.
  - (6) The REA II knowingly allows or orders others to do any of the actions specified in paragraphs (3) to (5).
  - (7) The REA II knowingly, or with reckless disregard for the risk, treats, handles, transports, disposes of, or stores any hazardous substance in a manner that causes any unreasonable risk of fire, explosion, serious injury, or death.
  - (8) The REA II knowingly, while performing the work of an REA, places another person in imminent danger of death or serious bodily injury.
  - (9) The REA II makes a false statement of fact required to be revealed in the application for registration.

(10) The REA II accepts, or agrees to accept, any payment that is in any way contingent upon the completion of a response action.

(11) The REA II accepts or agrees to accept any payment that is in any way contingent upon a specified finding, opinion or result of the services rendered.

(12) The REA II fails to comply with Health and Safety Code sections 25570.3 through 25570.4; and California Code of Regulations, title 22, sections 69200 through 69214.

(13) The REA II lends his or her registration to any other person or knowingly permits the use by another person.

NOTE: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code. Reference: Sections 25570-25570.4, Health and Safety Code.

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### **§ 69209. REA II Appeal Procedures.**

(a) The following procedures shall govern the appeal of decisions made under sections 69206, 69207, and 69208.

(1) An appeal shall be filed within sixty (60) days after the date of the rescission or denial notice.

(2) An appeal shall be made in writing and shall state the reason therefore. An appeal shall be supported by additional evidence, more references, affidavits, and supplemental information.

(3) The Director may reject an appeal which is not filed within the time period provided in subsection (a)(1).

(4) The Director shall notify, in writing and within 120 days of receipt of the appeal, each REA II applicant or registrant who appeals under this section of the Director's decision to either:

(A) Affirm the prior administrative decision and the reasons for the decision, or

(B) Reverse the prior administrative decision.

(5) If the Director affirms the prior administrative decision, the Director shall notify the REA II applicant or registrant of his or her right to a hearing under the Administrative Procedure Act (Government Code sections 11500 through 11530). A hearing shall be scheduled if the REA II applicant or registrant makes a written request for a hearing within 60 days after service of the notice of denial.

NOTE: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code. Reference: Sections 25570-25570.4, Health and Safety Code.

#### HISTORY

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### **§ 69210. REA II Audits.**

(a) The Department may perform periodic audits of work performed and certified by an REA II in order to ensure the work of the REA II meets the desired standard of performance specified in Health and Safety Code section 25570.3(f).

(b) The Department may perform periodic audits of work performed outside the Private Site Management Act (Health and Safety Code, Division 20, Chapter 6.8, Article 9, commencing with section 25395.1) and certified by an REA II to ensure the work of the REA II meets the desired standard of performance specified in Health and Safety Code section 25570.3(k) and described in section 69211.

(c) Deficiencies found during an audit, not severe enough to fall below the desired standard of performance shall be reported to the REA II and the lead agency.

(d) If, as the result of an audit, the Department finds that the work of an REA II is not in compliance with the provisions of sections 69208 and 69211, the registration of the REA II may be rescinded.

NOTE: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code. Reference: Sections 25570-25570.4, Health and Safety Code.

#### HISTORY

1. Change without regulatory effect adding new chapter 52 heading, renumbering title 14, division 8, chapter 3 (sections 19030-19044) to title 22, division 4.5, chapter 52 (sections 69200-69214) and renumbering and amending title 14, section 19030 to title 22, section 69200 filed 7-27-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 30).

### **§ 69211. Performance Standards.**

(a) When conducting audits pursuant to section 69210 and when determining whether an REA II meets the desired standard of performance, the Department will consider the following:

(1) Gross Negligence

Gross negligence means the REA II's failure to comply with the following:

(A) In conducting a Preliminary Endangerment Assessment, as defined in section 69200(l) or a Phase I assessment as defined in section 69200(j), the REA II shall establish and document whether a release or threatened release of hazardous substances and hazardous wastes has occurred and whether that release or threatened release poses a threat to public health or the environment.

(B) The Preliminary Endangerment Assessment shall include a community survey of residents, businesses, local officials and property owners surrounding the site to determine if there is significant community interest or controversy concerning the site. The REA II may use or employ an alternative mechanism to make this determination if it is approved by the lead agency.

(C) While conducting a Remedial Investigation as defined in section 69200(w) and a Feasibility Study as defined in section 69200(d) the REA II shall efficiently and effectively characterize the nature and extent of risks posed by hazardous substances and hazardous wastes and evaluate remedial options. Characterization of the nature and extent of risks shall include:

1. The gathering of information sufficient to support an informed risk management decision regarding which remedy appears to be most appropriate for a given site; and,

2. Data gathering that is adequate to characterize site conditions, determine the nature and extent of wastes, determine whether there has been a groundwater discharge or a threat to surface or groundwater, assess exposure pathways and risks to public health and the environment, conduct treatability studies as necessary and evaluate potential performance and evaluate the cost of treatment and/or remedial work.

3. The risk characterization and assessment shall be performed in a manner consistent with scientifically acceptable risk assessment practices, and shall take into consideration guidance published by the Department.

(D) In conducting a Remedial Design as defined in section 69200(v), a Remedial Action as defined in section 69200(t), and/or a Removal Action as defined in section 69200(x), the REA II shall detail the steps to be taken to meet the remedial objectives outlined in the Remedial Action Plan as defined in section 69200(u), Corrective Action Plan as defined in section 69200(a), Removal Action Workplan as defined in section 69200(y) or equivalent plan required by a Lead Agency.

(E) When conducting remedial work that results in ongoing operations and maintenance as defined in section 69200(i), the REA II shall prepare an operations and maintenance (O&M) plan which includes the O&M schedule, cost estimate, and provides for periodic value engineering and review.

(2) Inexcusable Neglect of Duty

(A) An inexcusable neglect of duty means the failure of the REA II to comply with the following:

1. Hold paramount the public health, safety and welfare, comply with all applicable laws and regulations and;

a. Apply the knowledge and skill referenced in sections 69203 and 69205, and required of an REA II practicing in California;

b. Act in a manner that protects the health and safety of the public, the health and safety of workers, and the environment;

c. Provide proof of insurance to each client, prior to beginning work for that client.

2. Exercise independent professional judgment and objectivity in any professional statement, testimony or report issued by the REA II.

3. Make a good faith and reasonable effort to identify and obtain relevant material, data, reports and other information, regarding conditions at the site upon which an REA II shall render a cleanup opinion. The Remedial Action Plan as defined in section 69200(u), Removal Action Workplan as defined in section 69200(y) or Corrective Action Plan as defined in section 69200(a), prepared by the REA II shall describe the efforts of the REA II to obtain relevant material, data, reports, and other information.

4. Evaluate and select sound scientific or technical methodologies for conducting investigations, assessments, and remedial work at hazardous substance and hazardous waste sites;

5. Develop sound technical conclusions, well-founded and documented recommendations and competent opinions based upon the results of multi-media investigations and assessments;

6. Have an understanding of relevant and applicable laws, regulations and guidance related to the investigation, assessment and remediation of hazardous substances and hazardous wastes; and

7. Render a hazardous substance or hazardous waste site cleanup opinion only when the REA II possesses the necessary education, training, and experience to render such an opinion, and the REA II has:

a. Managed, supervised or actually performed the work which is required to render a hazardous substance or hazardous waste site cleanup opinion; and,

b. Relied on personal professional experience, expertise, education or training; or,

c. Relied, in part, upon the advice of one or more professionals whom the REA II determines are qualified and possess the necessary education, training, expertise and experience in other areas, outside the registered professional's area of professional practice.

8. In rendering a hazardous substance or hazardous waste site cleanup opinion, the REA II shall disclose and explain the relevant facts, data, and other information which support the opinion. The opinion shall include all qualifications and limitations of the opinion.

9. If an REA II identifies an imminent hazard or a condition of imminent or substantial endangerment at a property at which the REA II is providing professional services, the REA II shall:

a. Immediately notify the client, and when necessary, an agency with authority to respond to an emergency, of the imminent hazard or the imminent and substantial endangerment, and of the need to notify the lead agency.

b. As soon as possible, but within 24 hours, the REA II shall orally notify the lead agency. Written



confirmation of such notice shall be submitted electronically, by personal delivery or mail within 72 hours.

10. An REA II shall notify the client and lead agency, within 10 calendar days of learning of material facts, data or other information, which existed at the time a previous opinion was rendered by the assessor or a predecessor assessor, that:

- a. Supports a hazardous waste site cleanup opinion contrary to his or her previously rendered opinion, or;
- b. Supports a hazardous waste site cleanup opinion contrary to a previous opinion by a predecessor REA II.
- (3) Intentional misrepresentation of laboratory data or other intentional fraud.
- (4) Charging for services not rendered, or for performing services that are not reasonably necessary.
- (5) Abandonment of any client, except for instances involving the nonpayment of fees for services rendered.
- (6) Conviction of a felony or misdemeanor involving the regulation of hazardous wastes, hazardous substances, or hazardous materials, including, but not limited to, a conviction of a felony or misdemeanor under section 25395.13.
- (7) Conviction of a felony or misdemeanor involving moral turpitude.
- (8) Knowingly making a false statement regarding a material fact or knowingly failing to disclose a material fact in connection with an application for registration.
- (b) Upon request or referral by the Department, by any lead agency, or by any person, the Department shall investigate complaints regarding the REA II's failure to meet applicable performance standards. The Department may conduct or arrange for the conduct of a preliminary investigation to determine the truth and validity of the allegations set forth in a complaint.
- (c) To facilitate disposition of a complaint, (at any time prior to the commencement of an adjudicatory proceeding), the Department may request the person filing the complaint, the REA II who is the subject of the complaint, or any other person to attend an informal conference to discuss the complaint, and any associated technical data, report, records, environmental samples, photographs, maps and files.
- (d) An REA II shall provide the Director's authorized representative with complete access at any reasonable hour of the day to all requested information including, but not limited to, technical data, reports, records, environmental samples, photographs, maps, and files used in the preparation of certified reports, contracts, invoices, payment schedules and accounting records, with the exception of proprietary or other confidential information related to implementation and compliance with the requirements of the REA II Program.
- (e) An REA II shall not submit a report or render a hazardous substance or hazardous waste site cleanup opinion in a report which does not include the signature and registration number of the REA II. If other registered professionals perform engineering, geologic or other professional services which are included in, or form the basis of the report or opinion, the signature and registration number of each shall be included in the report or opinion.
- (f) All engineering or geologic work shall be performed by a registered professional in compliance with the requirements of the Professional Engineers Act, Business and Professions Code sections 6700-6799 and the Geologist and Geophysicist Act, Business and Professions Code sections 7800-7887.

NOTE: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code. Reference: Sections 25570-25570.4, Health and Safety Code.

#### HISTORY

1. Change without regulatory effect adding new chapter 52 heading, renumbering title 14, division 8, chapter 3 (sections 19030-19044) to title 22, division 4.5, chapter 52 (sections 69200-69214) and renumbering and amending title 14, section 19030 to title 22, section 69200 filed 7-27-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 30).

#### **§ 69212. State Licensing Match System.**

(a) The Department shall take action regarding the registration of any Registered Environmental Assessor when appropriate pursuant to the Welfare and Institutions Code, section 11350.6. Such action may include, but is not limited to, the issuance of a temporary registration, rescission of a registration, denial of an REA application for renewal, or any other action authorized or required pursuant to section 11350.6 of the Welfare and Institutions Code.

NOTE: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code; section 11350.6, Welfare and Institutions Code. Reference: Sections 25570-25570.4, Health and Safety Code.

#### HISTORY

1. Change without regulatory effect adding new chapter 52 heading, renumbering title 14, division 8, chapter 3 (sections 19030-19044) to title 22, division 4.5, chapter 52 (sections 69200-69214) and renumbering and amending title 14, section 19030 to title 22, section 69200 filed 7-27-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 30).

#### **§ 69213. Limitations on Registration for Aliens.**

(a) All eligibility requirements contained herein shall be applied without regard to the race, creed, color, gender, religion, or national origin of the individual applying for the public benefit.

(b) Pursuant to section 411 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. No. 104-193) (PRWORA), (8 U.S.C. § 1621), and notwithstanding any other provision of this division, aliens who are not qualified aliens, nonimmigrant aliens under the Immigration and Nationality Act (INA) (8 U.S.C. § 1101 et seq.), or aliens paroled into the United States under section 212 (d)(5) of the INA (8 U.S.C. § 1182 (d)(5)) for less than one year, are not eligible for registration as an REA II as set forth in section 25570.2 of the Health and Safety

Code, except as provided in 8 U.S.C. § 1621(c)(2).

(c) A qualified alien is an alien who, at the time he or she applies for, receives, or attempts to receive an REA II registration, is, under section 431(b) and (c) of the PRWORA (8 U.S.C. § 1641(b) and (c)), any of the following:

- (1) An alien who is lawfully admitted for permanent residence under the INA (8 U.S.C. § 1101 et seq.).
- (2) An alien who is granted asylum under section 208 of the INA (8 U.S.C. § 1158).
- (3) A refugee who is admitted to the United States under section 207 of the INA (8 U.S.C. § 1157).
- (4) An alien who is paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. § 1182 (d)(5)) for a period of at least one year.
- (5) An alien whose deportation is being withheld under section 243 (h) of the INA (8 U.S.C. § 1253(h)) (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208) or section 241(b)(3) of such Act (8 U.S.C. § 1251(b)(3)) as amended by section 305 (a) of division C of Public Law 104-208.
- (6) An alien who is granted conditional entry pursuant to section 203 (a)(7) of the INA as in effect prior to April 1, 1980, (8 U.S.C. § 1153(a)(7)) (See editorial note under 8 U.S.C. § 1101, "Effective Date of 1980 Amendment.")
- (7) An alien who is a Cuban or Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980 (8 U.S.C. § 1522 note)).
- (8) An alien who meets all of the conditions of subparagraphs (A), (B), (C), and (D) below:
  - (A) The alien has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse's or parent's family residing in the same household as the alien, and the spouse or parent of the alien consented to, or acquiesced in, such battery or cruelty. For purposes of this subsection, the term "battered or subjected to extreme cruelty" includes, but is not limited to being the victim of any act or threatened act of violence including any forceful detention, which results or threatens to result in physical or mental injury. Rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence.
  - (B) There is a substantial connection between such battery or cruelty and the need for the benefits to be provided in the opinion of the Department. For purposes of this subsection, the following circumstances demonstrate a substantial connection between the battery or cruelty and the need for the benefits to be provided:
    1. The benefits are needed to enable the alien to become self-sufficient following separation from the abuser.
    2. The benefits are needed to enable the alien to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the alien from the abuser.
    3. The benefits are needed due to a loss of financial support resulting from the alien's separation from the abuser.
    4. The benefits are needed because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty or from legal proceedings relating thereto (including resulting child support, child custody, and divorce actions) cause the alien to lose his or her job or to earn less or to require the alien to leave his or her job for safety reasons.
    5. The benefits are needed because the alien requires medical attention or mental health counseling, or has become disabled, as a result of the battery or extreme cruelty.
    6. The benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the alien's ability to care for his or her children (e.g., inability to house, feed or clothe children or to put children into a day care for fear of being found by the abuser).
    7. The benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser.
    8. The benefits are needed to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the alien and/or to care for any resulting children.
    9. Where medical coverage and/or health care services are needed to replace medical coverage or health care services the alien had when living with the abuser.
  - (C) The alien has a petition that has been approved or has a petition pending which sets forth a prima facie case for:
    1. status as a spouse or child of a United States citizen pursuant to clause (ii), (iii), or (iv) of section 204 (a)(1)(A) of the INA (8 U.S.C. § 1154 (a)(1)(A)(ii), (iii) or (iv)),
    2. classification pursuant to clause (ii) or (iii) of section 204 (a)(1)(B) of the INA (8 U.S.C. § 1154 (a)(1)(B)(ii) or (iii)),
    3. suspension of deportation and adjustment of status pursuant to section 244(a)(3) of the INA (8 U.S.C. § 1254, as in effect prior to April 1, 1997 [Pub.L. 104-208, sec. 501 (effective September 30, 1996 pursuant to sec. 591); Pub.L. 104-208, sec 304 (effective April 1, 1997, pursuant to sec. 309); Pub.L. 105-33, sec. 5581 (effective pursuant to sec 5582)] (incorrectly codified as "Cancellation of removal under section 240A of such Act [8 U.S.C. § 1229 b] (as in effect prior to April 1, 1997)."
    4. status as a spouse or child of a United States citizen pursuant to clause (i) of section 204 (a)(1)(A) of the INA (8 U.S.C. § 1154 (a)(1)(A)(i)) or classification pursuant to clause (i) of section 204(a)(1)(B) of the INA (8 U.S.C. § 1154 (a)(1)(B)(i)), or
    5. cancellation of removal pursuant to section 240A (b)(2) of the INA (8 U.S.C. § 1229b (b)(2)).
  - (D) For the period for which benefits are sought, the individual responsible for the battery or cruelty does not reside in the same household or family eligibility unit as the individual subjected to the battery or cruelty.
- (9) An alien who meets all of the conditions of subparagraphs (A), (B), (C), (D), and (E) below:

(A) The alien has a child who has been battered or subjected to extreme cruelty in the United States by a spouse or a parent of the alien (without the active participation of the alien in the battery or cruelty), or by a member of the spouse's or parent's family residing in the same household as the alien, and the spouse or parent consented or acquiesced to such battery or cruelty. For purposes of this subsection, the term "battered or subjected to extreme cruelty" includes, but is not limited to being the victim of any act or threatened act of violence including any forceful detention, which results or threatens to result in physical or mental injury. Rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence.

(B) The alien did not actively participate in such battery or cruelty.

(C) There is a substantial connection between such battery or cruelty and the need for the benefits to be provided in the opinion of the Department. For purposes of this subsection, the following circumstances demonstrate a substantial connection between the battery or cruelty and the need for the benefits to be provided:

1. The benefits are needed to enable the alien's child to become self-sufficient following separation from the abuser.
2. The benefits are needed to enable the alien's child to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the alien's child from the abuser.
3. The benefits are needed due to a loss of financial support resulting from the alien's child's separation from the abuser.
4. The benefits are needed because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty or from the legal proceedings relating thereto (including resulting child support, child custody, and divorce actions) cause the alien's child to lose his or her job or to earn less or to require the alien's child to leave his or her job for safety reasons.
5. The benefits are needed because the alien's child requires medical attention or mental health counseling, or has become disabled, as a result of the battery or extreme cruelty.
6. The benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the alien's child's ability to care for his or her children (e.g., inability to house, feed, or clothe children or to put children into day care for fear of being found by the abuser).
7. The benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser.
8. The benefits are needed to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the alien's child and/or to care for any resulting children.
9. Where medical coverage and/or health care services are needed to replace medical coverage or health care services the alien's child had when living with the abuser.

(D) The alien meets the requirements of subsection (c)(8)(C) above.

(E) For the period for which benefits are sought, the individual responsible for the battery or cruelty does not reside in the same household or family eligibility unit as the individual subjected to the battery or cruelty.

(10) An alien child who meets all of the conditions of subparagraphs (A), (B), and (C) below:

(A) The alien child resides in the same household as a parent who has been battered or subjected to extreme cruelty in the United States by that parent's spouse or by a member of the spouse's family residing in the same household as the parent and the spouse consented or acquiesced to such battery or cruelty. For purposes of this subsection, the term "battered or subjected to extreme cruelty" includes, but is not limited to being the victim of any act or threatened act of violence including any forceful detention, which results or threatens to result in physical or mental injury. Rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence.

(B) There is a substantial connection between such battery or cruelty and the need for the benefits to be provided in the opinion of the Department. For purposes of this subsection, the following circumstances demonstrate a substantial connection between the battery or cruelty and the need for the benefits to be provided:

1. The benefits are needed to enable the alien child's parent to become self-sufficient following separation from the abuser.
2. The benefits are needed to enable the alien child's parent to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the alien child's parent from the abuser.
3. The benefits are needed due to a loss of financial support resulting from the alien child's parent's separation from the abuser.
4. The benefits are needed because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty or from the legal proceedings relating thereto (including resulting child support, child custody, and divorce actions) cause the alien child's parent to lose his or her job or to earn less or to require the alien child's parent to leave his or her job for safety reasons.
5. The benefits are needed because the alien child's parent requires medical attention or mental health counseling, or has become disabled, as a result of the battery or extreme cruelty.
6. The benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the alien child's parent's ability to care for his or her children (e.g., inability to house, feed, or clothe children or to put children into a day care for fear of being found by the abuser).
7. The benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser.
8. The benefits are needed to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the alien child's parent and/or to care for any resulting children.
9. Where medical coverage and/or health care services are needed to replace medical coverage or health

care services the alien child's parent had when living with the abuser.

(C) The alien child meets the requirements of subsection (c)(8)(C) above.

(d) For purposes of this section, "nonimmigrant" is defined the same as in section 101 (a)(15) of the INA (8 U.S.C. § 1101(a)(15)).

(e) For purposes of establishing eligibility for the REA II registration, Health and Safety Code section 25570 et seq., all of the following must be met:

(1) The applicant must declare himself or herself to be a citizen of the United States, a qualified alien under subsection (c), a nonimmigrant alien under subsection (d), or an alien paroled into the United States for less than one year under section 212(d)(5) of the INA (8 U.S.C. § 1182 (d)(5)). The applicant shall declare that status through use of the "Statement of Citizenship, Alienage, and Immigration Status for State Public Benefits," (Form REA 5, Revised 9/98 or electronic Form REA 6, Revised 9/98) which is incorporated by reference.

(2) The applicant must present documents of a type acceptable to the Immigration and Naturalization Services (INS) which serve as reasonable evidence of the applicant's declared status.

(3) The applicant must complete and sign Form REA 5 or electronic Form REA 6.

(4) Where authorized by the INS, the documentation presented by an alien as reasonable evidence of the alien's declared immigration status must be submitted to the INS for verification through the Systematic Alien Verification for Entitlements (SAVE) system procedures as follows:

(A) Unless the primary SAVE system is unavailable for use, the primary SAVE system verification must be used to access the biographical/ immigration status computer record contained in the Alien Status Verification Index maintained by the INS. Subject to subparagraph (B), this procedure must be used to verify the status of all aliens who claim to be qualified aliens and who present an INS-issued document that contains an alien registration or alien admission number.

(B) In any of the following cases, the secondary SAVE system verification procedure must be used to forward copies of original INS documents evidencing an alien's status as a qualified alien, as a nonimmigrant alien under the INA, or as an alien paroled into the United States under section 212 (d)(5) of the INA (8 U.S.C. § 1182 (d)(5)) for less than one year:

1. The primary SAVE system is unavailable for verification.
2. A primary check of the Alien Status Verification Index instructs the Department to "institute secondary verification."
3. The document presented indicates immigration status but does not include an alien registration or alien admission number.
4. The Alien Status Verification Index record includes the alien registration or admission number on the document presented by the alien but does not match other information contained in the document.
5. The document is suspected to be counterfeit or to have been altered.
6. The document includes an alien registration number on the A60 000 000 (not yet issued) or A80 000 000 (illegal border crossing) series.
7. The document is a fee receipt from INS for replacement of a lost, stolen, or unreadable INS document.
8. The document is one of the following: an INS Form I-181b notification letter issued in connection with an INS Form I-181 Memorandum of Creation of Record of Permanent Residence, an Arrival-Departure Record (INS Form I-94) or a foreign passport stamped "PROCESSED FOR I-551, TEMPORARY EVIDENCE OF LAWFUL PERMANENT RESIDENCE" that INS issued more than one year before the date of application for the REA II registration.

(5) Where verification through the SAVE system is not available, if the documents presented do not on their face reasonably appear to be genuine or to relate to the individual presenting them, the government entity that originally issued the document should be contacted for verification. With regard to naturalized citizens and derivative citizens presenting certificates of citizenship and aliens, the INS is the appropriate government entity to contact for verification. The Department should request verification by the INS by filing INS Form G-845 with copies of the pertinent documents provided by the applicant with the local INS office. If the applicant has lost his or her original documents, or presents expired documents or is unable to present any documentation evidencing his or her immigration status, the applicant should be referred to the local INS office to obtain documentation.

(6) If the INS advises that the applicant has citizenship status or immigration status which makes him or her a qualified alien, a nonimmigrant, or an alien paroled for less than one year under section 212(d)(5) of the INA, the INS verification should be accepted. If the INS advises that it cannot verify that the applicant has citizenship status or an immigration status that makes him or her a qualified alien, a nonimmigrant, or an alien paroled for less than one year under section 212(d)(5) of the INA, benefits should be denied and the applicant notified pursuant to the REA II appeal procedures (Cal. Code Regs., tit. 22, §69209), of his or her rights to appeal the denial of benefits.

(7) Provided that the alien has completed and signed Form REA 5, revised 9/98 or electronic form REA 6, revised 9/98, under penalty of perjury, eligibility for REA registration shall not be delayed, denied, reduced or terminated while the status of the alien is verified.

(f) Pursuant to section 432 (d) of the PRWORA (8 U.S.C. § 1642 (d)), a nonprofit charitable organization that provides federal, state, or local public benefits shall not be required to determine, verify, or otherwise require proof of eligibility of any applicant or beneficiary with respect to his or her immigration status or alienage.

(g) Nothing in this section shall be construed to withdraw eligibility for those programs described under section 411 (b) of the PRWORA, (8 U.S.C. § 1621 (b)).

(h) Pursuant to section 434 of the PRWORA (8 U.S.C. § 1644), where the Department reasonably believes that an alien is unlawfully in the State based on the failure of the alien to provide reasonable evidence of the alien's

declared status, after an opportunity to do so, said alien shall be reported to the Immigration and Naturalization Service.

(i) Any applicant who is determined to be ineligible for the REA II registration, whose services are terminated, suspended, or reduced pursuant to subsections (b), and (e), is entitled to a hearing, pursuant to section 69209.

NOTE: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code. Reference: Sections 25570-25570.4, Health and Safety Code; 8 U.S.C. Sections 1621, 1641 and 1642.

HISTORY

1. Change without regulatory effect adding new chapter 52 heading, renumbering title 14, division 8, chapter 3 (sections 19030-19044) to title 22, division 4.5, chapter 52 (sections 69200-69214) and renumbering and amending title 14, section 19030 to title 22, section 69200 filed 7-27-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 30).

**§ 69214. Sunset Review.**

(a) The Director in consultation with the Secretary for Environmental Protection, shall conduct a sunset review, within five years of the effective date of the regulations in sections 69200 through 69213, to determine whether the regulations should be retained, revised, or repealed.

NOTE: Authority cited: Sections 25570.3 and 58004.5, Health and Safety Code. Reference: Sections 25570-25570.4, Health and Safety Code.

HISTORY

1. Change without regulatory effect adding new chapter 52 heading, renumbering title 14, division 8, chapter 3 (sections 19030-19044) to title 22, division 4.5, chapter 52 (sections 69200-69214) and renumbering and amending title 14, section 19030 to title 22, section 69200 filed 7-27-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 30).